IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 545 OF 2007

1. Mr. Dipesh Ambaram Mesuria,
S/o Mr. Ambaram Karsanbhai &
Mrs. Pushpawati Ambaram Mesuria,
30 years of age, unmarried, British national,
holding Passport bearing no. 301408202,
issued by United Kingdom, Passport Agency,
on 17-04-2002 and expiring on 17-05-2012.
R/o 20 Shirley Road, Stratford, London
E15 4HX, England and presently residing
At H.No. 341, Mudda Wadi, Saligao, Bardez, Goa.

2. Ms. Jagrutiben Jayantilal Rajput,
D/o Mr. Jayantilal Narsaibhai Rajput &
Mrs. Bhanumati Jayantilal Rajput,
30 years of age, unmarried, British national,
holding Passport bearing no. 301492125,
issued by United Kingdom, Passport Agency,
on 10-05-2002 and expiring on 10-09-2012.
R/o 59 Goodall Road, Leytonstone, London
E11 4ER, England and presently residing
At H.No. 341, Mudda Wadi, Saligao, Bardez, Goa. ... Petitioners

V/s

STATE
(Through Chief Secretary) ... Respondent

Mr. Anthony D'Silva, Advocate for the Petitioners.
Mr. Guru Shirodkar, Addl. Govt. Advocate for the Respondent.

CORAM : F. I. REBELLO, J.

DATE : 15th NOVEMBER, 2007

JUDGMENT :

Rule. Heard forthwith.

2. The petitioners before this Court were the applicants before the Civil Judge Senior Division at Mapusa in Civil Miscellaneous Application

No. 132/2007/A(PORT). It is the case of the Petitioners both of whom are British Nationals and holding British passports that they desire to get married in the State of Goa and accordingly considering the laws in force in the State of Goa they were entitled to invoke the jurisdiction of the Court considering Article 248 of the Code of Civil Registration. Their application was rejected by order dated 13/11/2007 on the ground that there was no impediment certificate obtained from the Embassy. It is this order which is the subject matter of the present petition.

3. Heard learned Counsel for the petitioners and learned Counsel for the State of Goa.

4. Article 248 reads as under :

> "The marriages celebrated in the State of India (Goa) between foreigners (foreign nationals) belonging to any Country for which there is already in force or going to be in force the International Convention of Haya dated 12/06/1902 meant to regulate conflict of laws in the matter of Marriages, can be celebrated before the employee of the Civil Registration if the betrothed persons justify that they are in harmony with the National laws of each of them in respect of the capacity to get married by production of certificates from the Diplomatic agents/Consuls or Consular agents of their Country or by any proof/justification before the Civil Judge of the respective Jurisdiction. If only one of the betrothed persons is a foreigner/foreign national the proof/justification shall be only in relation to him.
>
> The above is a true translation into English of the Article 248 of the Code of Civil Registration of the State of India which is in Portuguese language."

5. On a consideration of the said Article it would be clear that the foreigners who desire of getting their marriage registered in the State of Goa can move the concerned employee in the office of the Civil Registrar. The persons so betrothed must establish their capacity to marry in harmony with their national laws, by satisfying the concerned employee, vested with the jurisdiction by production of certificates as to their capacity from the Diplomatic agents/Consuls or Consular agents of their Country. As the petitioners do not have with them the said certificates they chose not to apply before the employee conferred with the jurisdiction.

6. Article 248 in the alternative also confers jurisdiction on the Civil Court subject to the other tests of jurisdiction, to also grant permission for registration of the marriage on proof/justification. This proof/justification must be in respect of their capacity to marry under their national laws. The petitioners herein being British nationals therefore will have to satisfy that as per the laws prevailing in the United Kingdom that there is no impediment to their marriage. The petitioners have averred that both of them are bachelor/spinster (unmarried), that they are both major of age and in support thereof they have filed various affidavits to show that there is no impediment if their marriage is being registered.

7. The learned Judge proceeded on the footing that the same evidence

which is required to be produced before the relevant employee of the Civil Registrar competent to register the marriage, has also to be produced before the Civil Court.

8. On a consideration of Article 248 it would be clear that the learned Court misdirected itself in law. The requirement is in the alternative. The word "or" will have to be given its own distinct and grammatical meaning. So read it would mean that when the marriage is sought to be registered before the concerned employee of the Civil Registrar, before such employee the capacity must be satisfied by production of certificates from the Diplomatic agents/Consuls or Consular agents of their Country. Production of such document is not required if an application is made to the Civil Judge of the respective jurisdiction. The Court exercising jurisdiction in such case must be satisfied by proof/justification of the capacity of the parties to marry. In other words applying the ordinary test of evidence, is the material before the Court sufficient to show that the parties have capacity to marry or negatively that there is no impediment to the marriage being registered. The learned Court therefore misdirected itself in law in insisting on a no impediment certificate from the Embassy. There is no such requirement when an application is made before the Court, considering the terminology of Article 248 of the Code of Civil Registration. To reiterate what the learned Judge has to consider is the sufficiency or adequacy of the evidence produced and as to whether that

evidence would indicate that the parties have capacity to marry.

9. As the learned Judge misdirected itself in law this is a fit case for this Court to exercise its writ jurisdiction. Considering the submission made on behalf of the learned Counsel for the petitioners that the marriage is to be solemnized on Saturday, the 17th November, 2007 as per Hindu rituals, the learned Judge to consider and dispose off the application by the 16th of November, 2007 on the parties producing a copy of the order of this Court.

10. Rule made absolute accordingly. There is no order as to costs. Office to issue authenticated copy. Writ Petition disposed off.

F.I. REBELLO, J.

NH/-